IN THE SUPREME COURT OF THE STATE OF WASHINGTON

SPOKANE COUNTY, a Washington municipal entity; AL FRENCH, an individual taxpayer and current Spokane County Commissioner; JOHN ROSKELLEY, an individual taxpayer and former Spokane County Commissioner; and WASHINGTON STATE ASSOCIATION OF COUNTIES, a Washington non-profit association, Appellants, v. THE STATE OF WASHINGTON, Respondent.	No. 97739-9 En Banc Filed August 20, 2020

OWENS, J. — In 2018, the legislature enacted Substitute House Bill 2887 (SHB 2887), requiring noncharter counties with populations of 400,000 or more to elect five county commissioners by 2022, when originally such counties were required to elect three. SHB 2887 will also require affected counties to fund a redistricting committee to create five districts—one for each commissioner. These counties must also hold individual district elections for these commissioners instead of countywide

general elections. Spokane County, former and current Spokane County commissioners, and the Washington State Association of Counties argue this law violates article XI, section 4 of the Washington Constitution—mandating the legislature to establish a uniform system of county government—and article XI, section 5—requiring the legislature to provide for the election of county commissioners through general and uniform laws.

We hold that SHB 2887 is constitutional under article XI, sections 4 and 5. Under article XI, section 4, SHB 2887 properly sets forth a "uniform system" such that any noncharter county that exceeds 400,000 people in population will be subjected to SHB 2887's requirements. Further, under article XI, section 5, the legislature may classify counties by population for any purpose that does not violate other constitutional provisions, and SHB 2887 is a general law that properly implements district-only elections for noncharter counties of a certain size.

In reaching this result, we overrule *State ex rel. Maulsby v. Fleming*, 88 Wash. 583, 153 P. 347 (1915), a case that struck down a legislative scheme that removed the county coroner office in a certain class of counties. *Maulsby* was decided contrary to what "uniform system" meant at the time article XI, section 4 was drafted, and it was decided before article XI, section 5 was amended in 1924—providing the legislature with more flexibility in structuring county government and county elections. Thus,

Maulsby applies an erroneous rule of law that improperly restricts the legislature's constitutional authority under article XI, sections 4 and 5.

Accordingly, we affirm the superior court's order granting the State's motion for summary judgment and dismissing this case with prejudice.

FACTS AND PROCEDURAL HISTORY

Currently, all noncharter counties in Washington State, including Spokane County, are required to have three commissioners unless that number is increased by county voter approval. RCW 36.32.010. Spokane County residents have repeatedly voted on and rejected such an expansion—most recently in 2015. However, in 2018, the legislature enacted SHB 2887, increasing the number of commissioners in certain noncharter counties from three members to five. Relevant here, SHB 2887 requires that "[b]eginning in 2022, any noncharter county with a population of [400,000] or more must have a board of commissioners with five members." LAWS OF 2018, ch. 301, § 3(1). It also states that such counties must "use district nominations and district elections for its commissioner positions" and that they must fund a redistricting committee in charge of forming the five new commissioner districts. *Id.* Currently, the only noncharter county with more than 400,000 residents is Spokane County.

In February 2019, Spokane County, Al French (a current Spokane County commissioner), John Roskelley (a former Spokane County commissioner), and the

Washington State Association of Counties (collectively hereinafter "Spokane County") filed for declaratory judgment in Spokane County Superior Court, arguing that requiring Spokane County to have five county commissioners instead of three, to hold district-only commissioner elections, and to fund a redistricting committee, violates article XI, section 4 of the Washington Constitution, which in part requires the legislature to implement a uniform system of county government. Spokane County further argues that SHB 2887 violates article XI, section 5, which requires the legislature to provide for county commissioner elections by general and uniform laws. Specifically, Spokane County argues that SHB 2887's classification of counties by population exceeds what article XI, section 5 authorizes, and no other noncharter county is subject to SHB 2887's requirements. Spokane County moved for summary judgment, and the State filed a cross-motion for summary judgment and for dismissal with prejudice.

The trial court granted summary judgment for the State and dismissed the case with prejudice. Spokane County filed a direct notice of appeal with our court under RAP 4.2(b), and we granted review. Order (Wash. Apr. 1, 2020).

ANALYSIS

We review summary judgment rulings de novo. *State ex rel. Banks v. Drummond*, 187 Wn.2d 157, 167, 385 P.3d 769 (2016) (citing *Scrivener v. Clark Coll.*, 181 Wn.2d 439, 444, 334 P.3d 541 (2014)). Summary judgment is appropriate

"where there is no genuine issue of any material fact and the moving party is entitled to judgment as a matter of law." *Id.* This court "construe[s] evidence and inferences from the evidence in favor of the nonmoving party." *Id.* (citing *Scrivener*, 181 Wn.2d at 444). No material fact is at issue here as both parties stipulate to SHB 2887's effects. Therefore, we must determine if the trial court properly held that the State was entitled to judgment as a matter of law based on whether SHB 2887 complies with article XI, sections 4 and 5 of the Washington Constitution.

We review issues of constitutional law de novo. *Drummond*, 187 Wn.2d at 167 (citing *State v. Gresham*, 173 Wn.2d 405, 419, 269 P.3d 207 (2012)). "[A] statute is presumed to be constitutional and the burden is on the party challenging the statute to prove its unconstitutionality beyond a reasonable doubt." *Island County v. State*, 135 Wn.2d 141, 146, 955 P.2d 377 (1998).

1. SHB 2887 Complies with Article XI, Section 4

Article XI, section 4 of the Washington Constitution states in relevant part that "[t]he legislature shall establish a system of county government, which shall be uniform throughout the state." The first time we addressed this constitutional provision at length was in *Maulsby*, 88 Wash. 583. There, the legislature enacted a law abolishing the county coroner office in a certain subset of counties. *Id.* at 583-84. We struck down this statute under both article XI, section 4 and article XI, section 5

because we concluded that such a county setup, where a certain office exists in some counties but not in other counties, did not equate to a "uniform system." *Id.* at 584.

However, since *Maulsby*, article XI, section 5 was amended in 1924 to provide the legislature more flexibility in structuring county government, and we have not reevaluated what a "uniform system" means under article XI, section 4 or whether *Maulsby* was rightly decided. "'When interpreting a constitutional provision, we seek to ascertain and give effect to the manifest purpose for which it was adopted.'" *State v. Barton*, 181 Wn.2d 148, 155, 331 P.3d 50 (2014) (quoting *Westerman v. Cary*, 125 Wn.2d 277, 288, 892 P.2d 1067 (1994)). "In doing so, we look first to the plain language of the text 'and will accord it its reasonable interpretation.'" *Id.* (quoting *Wash. Water Jet Workers Ass'n v. Yarbrough*, 151 Wn.2d 470, 477, 90 P.3d 42 (2004)). "'The words of the text will be given their common and ordinary meaning, as determined at the time they were drafted.'" *Id.* (quoting *Wash. Water Jet Workers*, 151 Wn.2d at 477). Thus, we must look at the meaning of a "uniform system" at the time article XI, section 4 was drafted, which was during the first drafting of the Washington Constitution. *See id.*

At the time of the first constitutional convention, "uniform" was defined as "operates equally upon all persons who are brought within the relations and circumstances provided for." BLACK'S LAW DICTIONARY 1200 (1st ed. 1891). "System" seemingly did not have a set legal definition at the time this provision was

drafted; however, constitutional scholars have discovered that article XI, section 4 of the Washington Constitution is "identical in every respect, subject matter, context, words and punctuation marks" to California's constitution calling for a uniform system of county government. Lebbeus J. Knapp, *The Origin of the Constitution of the State of Washington*, 4 WASH. HIST. Q. 227, 241 (1913). In 1921, California considered its own "uniform system" provision and defined "system" as "an organized plan or scheme in keeping with which the constituent parts thereof are rendered similar and are connected and combined into one complete, harmonious whole, and it necessarily imports a unity of purpose and entirety of operation." *Coulter v. Pool*, 187 Cal. 181, 192, 201 P. 120 (1921). If Washington State's provision calling for county uniformity is identical to California's, then we conclude that Washington State's legal understanding of "system" is also the same as California's.

Synthesizing these terms, a "uniform system" at the time article XI, section 4 was drafted meant an organized plan or scheme that applied equally to everyone once put under a specific category within that scheme. Contrary to Spokane County's belief, these terms do not mean that each county in Washington needs to have the exact same setup as the neighboring county. Rather, the legislature has always been authorized to put forth a scheme that categorizes counties by characteristics that could hypothetically apply to all of them—a scheme that would "operate[] equally upon all

persons *who are brought within the relations and circumstances provided for*." BLACK'S, *supra*, at 1200 (emphasis added).

Applying this analysis here, SHB 2887 does not violate article XI, section 4. SHB 2887 establishes a scheme that classifies noncharter counties by population, and based on this scheme, a noncharter county will either have three commissioners or five, will be required to fund a redistricting committee, and will be mandated to hold district-only elections. Spokane County contends this bill affects only Spokane County because it is the only county that has 400,000 people or more in population. Appellants' Opening Br. at 14-18. While SHB 2887 *currently* affects only Spokane County, other noncharter counties in the future could have 400,000 people or more in population, putting them under the purview of this statute. SHB 2887 puts forth a "uniform system" of county government as understood by the initial drafters of the state constitution, and therefore we hold SHB 2887 is constitutional under article XI, section 4.

2. SHB 2887 Complies with Article XI, Section 5

Article XI, section 5 of the Washington Constitution states that

> [t]he legislature, by general and uniform laws, shall provide for the election in the several counties of boards of county commissioners . . . [*p*]*rovided*, [t]hat the legislature may, by general laws, classify the counties by population and provide for the election in certain classes of counties certain officers who shall exercise the powers and perform the duties of two or more officers. It shall regulate the compensation of all such officers, in proportion to their duties, and for that purpose may classify the counties by population.

As reflected, any law enacted under section 5 must be a "general law," a meaning discussed later in this opinion. However, Spokane County contends that the legislature's right to "classify the counties by population" pertains only to electing officers who exercise the powers and perform the duties of two or more officers and providing for these officers' compensation—not for any purpose. We have not yet discussed the meaning of "classify the counties by population" under article XI, section 5, thus posing a matter of first impression. As previously mentioned, "'[t]he words of the text [of a constitutional provision] will be given their common and ordinary meaning, as determined at the time they were drafted.'" *Barton*, 181 Wn.2d at 155 (quoting *Wash. Water Jet Workers*, 151 Wn.2d at 477). Thus, we must look at the historical context of this provision. *See id.*

a. The Legislature May Classify Counties by Population for Any Purpose under Article XI, Section 5

The amendment that allows the legislature to classify the counties by population and provide for the election of officers who exercise the powers and perform the duties of two or more officers was added to article XI, section 5 in 1924. However, the history behind this amendment does not reveal what the legislature intended when it stated that the "legislature may, by general laws, classify the counties by population."[1] When viewing article XI, section 5 in its entirety, however,

[1] Spokane County presents news articles from 1924 reflecting that this amendment pertains only to the election of officers who exercise the powers and perform the duties of two or

the drafters of this amendment clearly intended to allow the legislature to classify the counties by population for any reason that applies to article XI, section 5 (titled "County government"), so long as these classifications are made via "general laws" and do not violate any other constitutional provisions.

The pertinent language of article XI, section 5 states that "the legislature may, by general laws, classify the counties by population *and* provide for the election in certain classes of counties certain officers who shall exercise the powers and perform the duties of two or more officers." (Emphasis added). Here, the term "by general laws" applies both to "classify the counties by population" as well as to "provide for the election in certain classes of counties certain officers." If the legislature intended to have counties classified by population for the sole purpose of providing for the election of officers who exercise the powers and perform the duties of two or more officers, it likely would have phrased this amendment differently (e.g., "the legislature may . . . classify the counties by population *for the purpose of* providing the election in certain classes of counties certain officers who shall . . . perform the duties of two or more officers").

Our conclusion is further supported by the latter part of article XI, section 5 concerning the compensation of county officers, stating that the legislature "shall

---

more officers. Appellants' Opening Br. at 26-27. However, none of the evidence presented in these articles explicitly states that this amendment purports to allow *only* for the election of such officers. These articles are not dispositive of this amendment's meaning, and we still afford the text of article XI, section 5 its ordinary meaning.

regulate the compensation of all such officers, in proportion to their duties, and *for that purpose may classify the counties by population*." (Emphasis added). This part existed in the original text of article XI, section 5 when it was first drafted in 1889, and the drafters used "for that purpose" in the original text—language that was not used in the 1924 amendment to article XI, section 5. By passing a later amendment that broadly states the legislature may, "by general laws, classify the counties by population," the legislature clearly passed this amendment to reflect that the legislature may classify counties by population for any purpose under article XI, section 5, so long as these purposes do not violate other constitutional provisions.

This conclusion is also in line with our precedent. *See State ex rel. Allen v. Schragg*, 159 Wash. 68, 292 P. 410 (1930). In *Allen*, a case decided 15 years after *Maulsby*, we considered a statute's constitutionality under article XI, section 5 that "classifie[d] counties, fixe[d] the compensation of county officers, and consolidate[d] certain county offices." *Id.* at 69. In other words, we considered the constitutionality of all three of these actions—not whether the statute properly classified counties by population to elect officers who exercised the powers and performed the duties of two or more officers. Specifically, we reasoned that "the legislature may 'by general laws classify the counties by population.'" *Id.* at 70 (quoting WASH. CONST. art. XI, § 5). We considered this portion of section 5 only to determine that classifying the counties

by population was constitutional, and we separately discussed whether the legislature could appropriately consolidate one officer's position and effectively remove another.

Therefore, the legislature may properly classify the counties by population for any purpose relating to county government, so long as these classifications are made via "general laws" and do not violate other constitutional provisions. SHB 2887 complies with article XI, section 5's population classification requirement, and if we conclude that SHB 2887 is a general law, then we must hold that it is constitutional under article XI, section 5.

b. SHB 2887 Is a General Law That Complies with Article XI, Section 5

As mentioned, the legislature may classify the counties by population only via "general laws." *Allen*, 159 Wash. at 70. "A special law is one which relates to particular persons or things, and a general law is one which applies to all persons or things of a class." *Id.* Comparing this definition with SHB 2887, this new law clearly "applies to all persons or things of a class" as it applies to all noncharter counties with 400,000 people or more in population. SHB 2887 does not specify certain counties by name such that it would relate to a "particular person[] or thing[]" but, rather, creates a scheme that would generally apply to all who fall within that scheme.

Spokane County argues that SHB 2887 is not a general law because the legislature knew when it was passing SHB 2887 that it would apply only to Spokane County. Appellants' Opening Br. at 15-19. However, "[t]he law is not

unconstitutional because, at the time of its enactment, only one county happened to be at that time within one of the classifications." *Allen*, 159 Wash. at 71. Even if the legislature intended this bill to aid Spokane County, that does not make SHB 2887 unconstitutional under article XI, section 5. "One or more counties may, from time to time, be in different classes, depending upon whether the population thereof remains static, increases or diminishes." *Id.* SHB 2887 puts forth a "general law" that properly classifies noncharter counties by population for the purposes of electing county commissioners and structuring county government, thus we hold that it is constitutional under article XI, section 5.[2]

3. We Overrule Maulsby

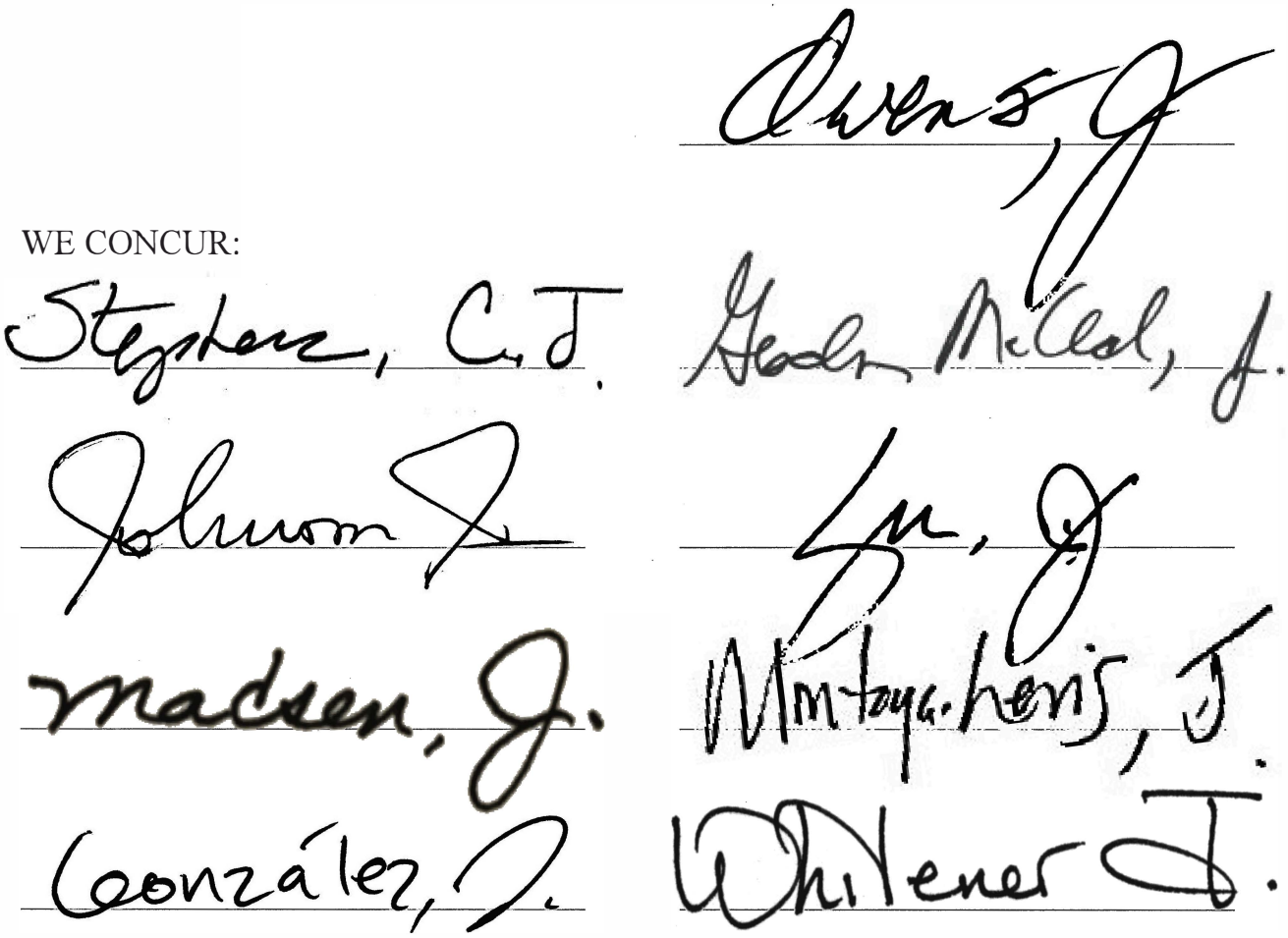
The State, while not arguing that we are required to do so, suggests that we consider overruling *Maulsby*. We will overrule one of our prior holdings "if it lays down or tacitly applies a rule of law which is clearly erroneous, and if to apply the doctrine would work a manifest injustice to one party, whereas no corresponding injustice would result to the other party if the erroneous decision should be set aside." *Greene v. Rothschild*, 68 Wn.2d 1, 10, 414 P.2d 1013 (1966). Based on the 1924

[2] Spokane County argues that allowing commissioner districts to be drawn by legislative appointees "intrudes on the local control over the election of county officials that the Constitution otherwise delegates to counties." Appellants' Opening Br. at 21 n.26. However, Spokane County fails to cite to any provision allowing for such delegation beyond the "home rule charter" process under article XI—a process that is not at issue in this case and is something Spokane County may elect to have, circumventing SHB 2887 altogether. Appellants' Reply Br. at 2.

amendment to article XI, section 5, and based on what "uniform system" meant at the time article XI, section 4 was drafted, *Maulsby* applies an erroneous rule of law based off how the legislature may structure county government; applying *Maulsby* here would work a manifest injustice against the legislature's constitutional authority. Therefore, we overrule *Maulsby*.

CONCLUSION

SHB 2887 puts forth a "uniform system of county government" that develops a scheme for noncharter counties' boards of commissioners. SHB 2887 is also a general law that properly classifies counties by population for the purpose of structuring county government. Therefore, we hold that SHB 2887 is constitutional under article XI, sections 4 and 5 of the Washington Constitution, overrule *State ex rel. Maulsby v. Fleming*, and accordingly affirm the superior court's order granting the State's motion for summary judgment and dismissing this case with prejudice.



WE CONCUR: